

**REMARKS**

This amendment is being filed in response to the non-final Office Action mailed on June 30, 2006. Claims 1-21 have now been cancelled and new claims 22-39 are being added. No new matter has been added or claimed, and each of the new claims is properly supported by the disclosure of the application as originally filed.

Claim 22 recites a method for operating a vehicle communication unit within a mobile vehicle communication system in which:

- (1) a vehicle communication unit on a first vehicle attempts to operate in a primary communication mode,
- (2) a primary communication mode failure is detected,
- (3) a short range wireless communication between the first vehicle and a second vehicle is initiated responsive to the primary communication mode failure,
- (4) data is transmitted between the first vehicle and the second vehicle via the short range wireless communication, and
- (5) the data is communicated with a service provider via a wireless carrier system to request assistance for the first vehicle using the vehicle communication unit on the second vehicle.

By using the vehicle communication unit on the second vehicle, the first vehicle is able to request assistance from the service provider in response to the primary communication mode failure.

Claim 31 recites a method for operating a vehicle communication unit within a mobile vehicle communication system in which:

- (1) a first vehicle communication unit on a first vehicle is attempted to operate in a primary communication mode,
- (2) a primary communication mode failure is detected due to degraded equipment on the first vehicle,
- (3) a second communication mode is initiated responsive to the failure by using a local wireless link between the first vehicle and a second vehicle having a second vehicle communication unit configured to communicate using the primary communication mode,

(4) a request for assistance for the first vehicle is sent to a service provider via a wireless communication system using the second vehicle communication unit, and

(5) data is communicated to complete the request for assistance between the first vehicle and the second vehicle using the second communication mode

This method is particularly useful where the first vehicle has degraded equipment. The second communication mode enables the first vehicle to request assistance from the service provider using the second vehicle.

### **Prior Claim Rejections**

Claims 1-21 have been cancelled so rejection of those claims is moot. The cancellation of these claims is without disclaimer of the subject matter thereof and without prejudice to Applicants' right to later pursue the subject matter of those claims in this or another application.

With regard to the new claims, the prior art of record does not disclose or render obvious the subject matter of independent claims 22 and 31. In Zicker (US Pat. No. 6,151,510), a wireless communication system uses handsets which automatically switch between a standard cellular radiotelephone mode of operation and an enhanced cordless mode when the handsets are near pico cells that are interconnected to the public switched telephone network. See Abstract. Zicker does not show "operating a telematics device in the secondary communication mode within the vehicle communication unit" as noted by the Examiner on page 2 of the Office Action dated June 30, 2006. Zicker also does not show communication between two vehicles.

In the last Office Action, the Examiner combined the teachings of Zicker with those of Fraser (US Pat. No. 6,947,732). In Fraser, a vehicle communication device may be placed in a first communication service sleep mode and remaining in the first communication sleep mode if a first communication service is not available. A determination if a second communication service is available may be made and the second communication service may be selected if available. Fraser does not show, however, communication between two vehicles.

More importantly, Applicants respectfully submit that Fraser is not prior art that can properly be used in an obviousness rejection. Under 103(c)(1), subject matter which qualifies as prior art only under 102(e) shall not preclude patentability under 103(a) where the subject matter and the claimed invention were subject to an obligation of assignment to the same person. 103(c)(1) states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

General Motors Corporation is the original assignee of both the Fraser patent and the application in question. Fraser is only prior art under 102(e) because the application in question was filed prior to the both the issuance of the Fraser patent and the earlier publication of its application. Therefore, it is not proper to combine the teachings of Fraser with the teachings of other prior art.

Applicants have submitted an IDS disclosing prior art from a related application pending before the USPTO. Tzamaloukas (US Pat. No. 6,925,378) is one of the references disclosed in the IDS. In Tzamaloukas, participating vehicles communicate floating car data with the central server via a wireless wide area network link (Col. 4 lines 25-32). The participating vehicles may communicate with fixed egress points or other participating vehicles acting as mobile egress points. Col. 3 lines 25-38. As indicated in a GPS location example at Col. 7, line 39 through Col. 8, a participating vehicle having GPS but unable to determine its position (e.g., because of tall buildings), can use dead reckoning as well as link quality information from nearby wireless access points to determine its location.

Tzamaloukas does not teach or suggest all of the claim limitations in new independent claim 22. For example, claim 22 recites that “data is communicated with a service provider via a wireless carrier system to request assistance for the first vehicle using the vehicle communication unit on the second vehicle.” This feature in combination with the remainder of the claim is not disclosed or suggested by Tzamaloukas. Tzamaloukas does not disclose the combination of (a) the first vehicle

being equipped to communicate in a primary communication mode and (b) data communicated with a service provider via a wireless carrier system to request assistance for the first vehicle using the vehicle communication unit on the second vehicle in response to a primary communication mode failure.

With respect to independent claim 31, this claim recites (a) detecting a primary communication mode failure due to degraded equipment on a first vehicle, (b) initiating a second communication mode using a local wireless link between the first vehicle and a second vehicle responsive to the primary communication mode failure, and (c) sending a request for assistance for the first vehicle using a second vehicle communication unit on the second vehicle to communicate with a wireless communication system. Tzamaloukas does not teach or suggest this combination of claimed subject matter.

Accordingly, Applicants respectfully submit that independent claims 22 and 31 each patentably define over the prior art. Claims 23-30 and 32-39 each ultimately depend from one of these claims and should be allowed therewith.

In view of the foregoing, reconsideration is requested. The Examiner is invited to telephone the undersigned if doing so would advance prosecution of this case.

The Commissioner is hereby authorized to charge Deposit Account No. 07-0960 for a two-month extension of time and any other required fees or to credit that same deposit account with any overpayment associated with this communication.

Respectfully submitted,

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